

Applicant notes with appreciation the interview courteously afforded the undersigned counsel for the Applicant on May 23, 2006, wherein Applicant's position concerning the teachings of the Werner et al. reference was presented. Since the Werner et al. reference was cited for the first time in the Final Rejection, this was the first opportunity for Applicant to provide such information to the Examiner.

As discussed at the interview, the method and apparatus disclosed in the Werner et al. reference are for the purpose of reusing an anesthetic. As explained in the introductory portion of the Werner et al. reference at column 1, because of the high cost of modern anesthetics, it is desirable to try to recover even small amounts of anesthetic that may remain in the exhaled breathing gas of a patient who has been anesthetized using a gaseous anesthetic. The apparatus shown in Figures 2-4, on which the Examiner relied in the latest Office Action, is not for the purpose of absorbing carbon dioxide, but is instead exclusively for the purpose of adsorbing anesthetic from exhaled breathing gas. This is stated at column 2, lines 10-12. Moreover, the Werner et al. reference explicitly teaches, at column 2, lines 22-25, that the adsorption material of the filter should be such that it prefers the anesthetic to water and carbon dioxide. Therefore, only anesthetic is adsorbed in the filter shown in Figures 2-4.

The Werner et al. reference does disclose the use of a carbon dioxide absorber, however, as explicitly stated at column 2, lines 39-40, if such a carbon dioxide absorber is used, it will be used in addition to the aforementioned anesthetic-adsorbing filter, and will be a separate device. As such, nothing shown in Figures 2-4, which represent the aforementioned anesthetic adsorber, would be considered by a person of ordinary skill in the field of designing respiratory devices to necessarily

be applicable to a carbon dioxide absorber. The Werner et al. reference provides no teachings whatsoever regarding the structure or operation of such a carbon dioxide absorber.

Therefore, the Werner et al. reference itself teaches away from using the structure shown in Figures 2-4 as a carbon dioxide absorber, and provides explicit statements, as noted above, that the apparatus shown in Figures 2-4 is *not* for the purpose of carbon dioxide absorption and, if carbon dioxide absorption is desired, this should be done in addition to the filter shown in Figures 2-4 and at a separate location.

Applicant therefore respectfully submits that the subject matter of claims 1-4 would not have been obvious to a person of ordinary skill in the field of designing respiratory systems based on the teachings of Werner et al.

The Final Rejection was based on the assumption on the part of the Examiner that the apparatus disclosed in the Werner et al. reference in Figures 2-4 was, in fact, a carbon dioxide absorber. If the Examiner now agrees that this is not the case, but the Examiner is considering whether it would have been obvious to a person of ordinary skill in the field of respiratory system design to nevertheless use the apparatus shown in Figures 2-4 of Werner et al. as a carbon dioxide absorber, Applicant would respectfully traverse such a conclusion.

First, as noted above, the filter shown in Figures 2-4 of Werner et al. is an anesthetic adsorber, rather than an absorber. This is because for the specific purpose disclosed therein, namely reclaiming an anesthetic in exhaled breathing gas for re-use thereof, it is important that adsorption (i.e., retention of the anesthetic only at the surface of the filter) occur, rather than absorption, because absorption of the

anesthetic would make it too difficult to restore the anesthetic to the inhaled breathing gas.

Moreover, the amount of anesthetic in exhaled breathing gas that has not been absorbed by the patient is not the same as the amount of carbon dioxide in exhaled breathing gas, and therefore there is no indication that a filter structure such as shown as in Figures 2-4 of Werner et al., that is specifically designed to capture anesthetic in the exhaled breathing gas, could, or even should, be used for the purpose of absorbing carbon dioxide. In summary, because of the knowledge possessed by those of ordinary skill in the field of respiratory system design, such a person, upon reading the Werner et al. reference and being informed that the apparatus disclosed therein is for reclaiming anesthetic, would have no reason to assume that the same apparatus could be used, with the same structure, for the purpose of absorbing carbon dioxide.

As to claim 5, the Examiner additionally relied on the Werjefelt reference as teaching a carbon dioxide absorber having a membrane with an absorber material. The Examiner stated it would have been obvious to a person of ordinary skill in the relevant technology to make use of the membrane disclosed in the Werjefelt reference in the Werner et al. filter. For the reasons discussed above, however, it is clear that there is no reason at all to make use of carbon dioxide absorbing material in any form in the filter disclosed in the Werner et al. reference, in view of the fact that the Werner et al. filter is for the completely different purpose of adsorbing, and thereby reclaiming, anesthetic from exhaled breathing gas, and has nothing to do with carbon dioxide absorption.

All claims of the application are therefore submitted to be in condition for allowance, and early reconsideration of the application is respectfully requested.

Submitted by,

Steven A. Nolf (Reg. 28,982)

SCHIFF, HARDIN LLP
CUSTOMER NO. 26574
Patent Department
6600 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312/258-5790
Attorneys for Applicant

CH1\ 4570756.1

BEST AVAILABLE COPY